

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA09-874

DEENA REYNOLDS and HUNTER
DALTON GOODWIN
APPELLANTS

V.

ESTATE OF THOMAS EDWARD
GOODWIN, DECEASED, ELIZABETH
G. WRIGHT, and LISA MARTIN
APPELLEES

Opinion Delivered February 24, 2010

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. PR-08-393-3]

HONORABLE THOMAS LYNN
WILLIAMS, JUDGE

AFFIRMED IN PART; REVERSED
AND REMANDED IN PART

LARRY D. VAUGHT, Chief Judge

Two probate orders are at issue in this appeal. In the first order, the trial court denied appellant Hunter Dalton Goodwin's claim against the estate of his deceased father, Thomas Edward Goodwin. In the second, the court ordered the return and sale of a motorcycle that Hunter claimed to own by virtue of an inter vivos gift from his father. On appeal, Hunter claims that both orders are clearly against the preponderance of the evidence and erroneous as a matter of law. We affirm in part and reverse and remand in part.

Thomas Goodwin executed a last will and testament on January 5, 2008. On January 11, 2008, in an effort to avoid creditors, he declared a trust naming as beneficiaries his girlfriend, appellee Lisa Martin, and his son Hunter. The trust directed that the decedent's real property be

sold and divided between Martin and Hunter. Thomas Goodwin died on January 20, 2008. On July 8, 2008, a petition for probate of will and appointment of executor (naming decedent's sister, Elizabeth Goodwin Wright as Executrix) was filed in and approved by the probate court.

Thomas Goodwin was no longer married to Hunter's mother appellant, Deena Reynolds, at the time of his death. The parties were divorced by decree on October 10, 1997. The decree incorporated by reference a negotiated property settlement between the parties. The decree also ordered that Thomas Goodwin provide either a \$100,000 life-insurance policy naming Hunter as the beneficiary; or, alternatively, at the time of his death, Thomas Goodwin would convey property he owned in Royal, Arkansas, to Hunter, "as heir, free of any debt." Thomas Goodwin failed to acquire the life-insurance policy contemplated in the divorce decree prior to his death.

When Thomas Goodwin died, Hunter and Deena Reynolds made a claim against the estate asking that the property-settlement agreement in the decree of divorce be enforced against the estate. The probate court denied the claim in an order dated April 6, 2009, after the estate successfully argued that because the property in dispute was not free-and-clear of debt¹ at the time of Thomas Goodwin's death, it was impossible to perform the first alternative mentioned in the decree and, secondarily, that acquiring a life-insurance policy was "personal" in nature, and as such was an exception to the rule relating to enforcement of property-settlement agreements.

Additionally, prior to his death, Thomas Goodwin owned a Harley Davidson motorcycle.

¹ Approximately \$57,000 was still owed on the property.

In both his last will and testament and his trust, he directed that Hunter was to receive the motorcycle. However, according to the hearing testimony, the decedent had already given the motorcycle to Hunter, and Hunter was in actual possession of the bike. According to the testimony, at the time of the alleged gift, Hunter was seventeen years old and his mother, Reynolds, agreed to the gift and assumed responsibility due to Hunter's status as a minor. Martin (the other primary beneficiary of the will) also testified that Thomas Goodwin had already given the motorcycle to his son and that Hunter was in possession of the bike. In fact, all parties who testified at the hearing related that—prior to his death—Thomas Goodwin gifted his motorcycle to Hunter.

Following the March 20 hearing, the trial court issued an order (dated March 30, 2009) that stated in relevant² part

4. Based upon the testimony of the parties, it is unclear to the Court if the Harley Davidson motorcycle . . . [is] the property of the Estate or if [it was] properly gifted prior to death.
5. Further testimony is required before a determination can be made regarding the Harley Davidson motorcycle
6. The Court orders that the Harley Davidson . . . be returned to the Executor of the Estate until a decision is rendered.

Despite the assertion that it required further testimony in order to resolve the motorcycle-gift question, on May 22, 2009, the trial court issued an order stating that the “request for permission

² The trial court also ordered the return to the Estate and sale of a Concorde boat that had allegedly been given to Martin by Thomas Goodwin prior to his death. However, Martin does not appeal that decision.

to sell the 1995 Harley Davidson . . . is granted.”

For their first point on appeal, appellants claim that the trial court erred in its refusal to require the estate to perform under the “enforceable contract subsumed in the divorce decree.” Appellants go on to cite case law that adequately supports their contention that a property settlement that had been incorporated into a divorce decree is an enforceable contract. However, in this case, the language that appellants seek to have enforced is not part of the property-settlement agreement. It is contained only in the decree portion. Curiously, neither the parties nor the trial court considered the implication of this fatal fact. Instead the arguments made by both parties on the real-property issue assume that there is a provision in the property-settlement agreement whereby Thomas agreed to either maintain a life-insurance policy for his son’s benefit or pay off the mortgage on his Royal, Arkansas, property and give it to his son. The parties’ dispute is not concerning whether a contract exists, but whether it is enforceable. The trial court followed in step.

However, based on this record, there is no contract. A decree of divorce is not a contract. It is merely a recitation of findings and an order to do or cease doing. In this case, the proper remedy for Thomas’s failure to follow the mandate of the decree would have been to file a petition to enforce the decree while he was still alive. As such, we find that the trial court reached the right result by denying the real-property claim against the estate, albeit for the wrong reason. *Moore v. State*, 92 Ark. App. 453, 459, 215 S.W.3d 688, 691 (2005) (stating we will affirm the trial court if it reaches the right result for the wrong reason).

In their second argument, appellants claim that the trial court erred in its ordered estate

sale of the Harley Davidson motorcycle because it had already been gifted to Hunter prior to his father's death. Appellee Martin agrees. The trial court stated that further testimony was *required* before a determination could be made. Yet, it made an implicit determination by order that the motorcycle be sold for the benefit of the estate, without taking further testimony. The record is not clear as to what impact—if any—the trust declaration has on the forced-sale of the motorcycle or why the entire quantum of proof at the hearing demonstrating that the motorcycle had been gifted was discounted. Indeed, there are three possible routes for the disposition of the bike—the trial court could make findings that it was an inter vivos gift, that it is to pass through the trust, or that it is an asset of the estate. However, without adequate findings supporting at least one of these paths, we cannot competently review this issue. As such, we reverse the trial court's order granting the estate permission to sell the motorcycle and remand for further findings.

Affirmed in part; reversed and remanded in part.

KINARD and GRUBER, JJ., agree.